IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 28TH JUNE 2007 / 7TH ASHADHA 1929

WP(C).No. 17772 of 2006(N)

OA.187/2000 of DEBT RECOVERY TRIBUNAL, ERNAKULAM

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PETITIONER:

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1. SAMEEKSHA HOUSE & HOMES PVT. LTD.,
REPRESENTED BY DIRECTOR, V. VIJAYAKUMAR,
ZABIL BUILDING, OLD THEVARA ROAD, PALLIMUKKU,
ERNAKULAM.

2. RAJENDRAN AMBADY,
DIRECTOR, SAMEEKSHA HOUSE & HOMES PVT. LTD.,
PLOT NO.G-276, PANAMPILLY NAGAR, KOCHI-16.

BY ADV. SRI.P.N.PURUSHOTHAMA KAIMAL

RESPONDENTS:

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1. THE LORD KRISHNA BANK,
REPRESENTED BY THE GENERAL MANAGER,
HEAD OFFICE, KALOOR, KOCHI-17.

*2. M/S. HOUSING & URBAN DEVELOPMENT CORPORATION LTD.,
HUDCO BHAVAN,
INDIA HABITAT CENTRE COMPLEX, LODHI ROAD,
NEW DELHI – 110 003, REP. BY ITS
ASSISTANT LAW OFFICER, SMT. S.SREEVIDYA,
AT ITS REGIONAL OFFICE, THIRUVANANTHAPURAM

(* ADDITIONAL R2 IMPLEADED AS PER ORDER DATED 18/10/2006 IN IA NO. 14519/06)

BY ADV. SRI.S.R.DAYANANDA PRABHU
SRI.M.M.ABDUL AZIZ (SR.)
SRI.M.A.ABDUL HAKHIM – FOR R2

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) No. 17772/2006

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE CLAIM PETITION FILED BY THE RESPONDENT DATED 14/06/2005.

P2 : COPY OF THE JUDGEMNT IN OA NO.187/2000 PASSED BY DEBT RECOVERY TRIBUNAL, ERNAKULAMD ATED 30/09/2005.

P3 : COPY OF THE JUDGMENT IN OA NO.220/2000 PASSED BY DEBT RECOVERY TRIBUNAL, ERNAKULAM DATED 09/12/2005.

P4 : COPY OF THE CLAIM STATEMENT FILED BY THE PETITIONER BEFORE SUB COURT, THRISSUR DATED 06/07/2005.

P5 : COPY OF THE CLAIM STATEMENT FILED BY RESPONDENT IN LAR 57/03 BEFORE THE SUB COURT THRISSUR DATED 09/2005.

P6 : COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE RESPONDENT DATED 27/06/2006.

P7 : COPY OF THE NOTICE ISSUED BY THE RECOVERY OFFICER OF DEBT RECOVERY TRIBUNAL DATED 06/06/06.

P8 : COPY OF THE RESOLUTION DATED 25/06/2006.

P9 : COPY OF THE MINUTES OF THE MEETING OF THE BOARD DATED 25/06/2006.

RESPONDENT'S EXHIBITS

EXT.R1(a) : COPY OF REGISTERED LETTER DATED 15/04/2005 ISSUED BY RESPONDENT IN FAVOUR OF PETITIONER.

// TRUE COPY //

PA TO JUDGE.

jg

C.N.RAMACHANDRAN NAIR, J.

WP(C) Nos. 17772 & 23978 of 2006

Dated, this the 28th day of June, 2007

J U D G M E N T

While petitioner in WP(C) No. 23978/2006 was a Director of the Borrower company, the petitioners in WP(C) No. 17772/2006 are the Borrower company and one of the present directors of the company. They have filed the writ petitions challenging personal recovery proceedings initiated against directors for recovery of arrears due to the 1st respondent Bank. The land belonging to the company is taken over in acquisition proceedings and compensation amount deposited is fully withdrawn under interim orders by the Bank. The learned counsel for the Bank pointed out that besides the mortgaged property, the Bank has right to proceed against the directors personally, as the Tribunal has passed award against them. Therefore recovery proceedings can be continued by the Recovery Officer as provided under the Provisions of IInd Schedule of the Income Tax Act. These WP(C)s are disposed of directing the Recovery Officer to proceed with recovery in accordance with the Rules after giving an opportunity to the decree holder Bank to adduce evidence about the assets of the directors and Company.

Since the Bank is allowed to withdraw compensation amount deposited in the LAR Account under interim orders of this Court, there will be a direction to the Bank, to pay to HUDCO so much of the compensation amount attributable to the value of the land mortgaged to HUDCO subject to the debt amount and balance can be appropriated towards Bank loan. If LAR case is over, Bank will make payment to 'HUDCO' within two weeks from receipt of this judgment.

These WP(C)s are disposed of as above.

(C.N.RAMACHANDRAN NAIR, JUDGE)

jg